



Office of the Attorney General

State of Texas

June 30, 1993

DAN MORALES

ATTORNEY GENERAL

Mr. Ivan Hurwitz
Director, Information Services
Texas State Board of Medical Examiners
P.O. Box 149134
Austin, Texas 78714-9134

OR93-396

Dear Mr. Hurwitz:

You have asked this office whether certain information is subject to required public disclosure under the Open Records Act (the "act"), article 6252-17a, V.T.C.S. Your request was assigned ID# 19800.

You indicate that the Texas State Board of Medical Examiners (the "board") frequently receives requests for information obtained by the board as part of applications by individual physicians for licensure. You have provided us with an example of such a request, which seeks "the names of physicians whose medical licenses have been revoked by the state since 1985" and also their dates of birth and social security numbers. You have informed the requestor that the board is willing to disclose the names of the relevant physicians.¹ You argue that the remaining information is excepted from public disclosure by section 3(a)(1) of the act.²

¹You request an opinion "regarding to whom and under what circumstances the Board is required to release" the social security numbers, dates of birth, ethnic origin, and sex of individual physicians. Because the request you submitted does not seek information about the physicians' ethnic origin and sex, we do not consider whether this information is protected under the act. *See generally* V.T.C.S. art. 6252-17a, § 7(a), (b). The public availability of this information would be more appropriately addressed in conjunction with a specific request for information about physicians' ethnic origin and sex under the act, or pursuant to a request for an attorney general opinion from the board's executive director. *See* Gov't Code § 402.042; *see generally* Attorney General Opinion DM-20 (1991) at 3-6.

²You state that the board collects social security numbers on the applications of individual physicians seeking licensure by the board, but indicates that these numbers will be used by the board "to insure identification only." Information is not confidential under the act simply because the person providing the information anticipates that it will be kept confidential, nor is information excepted from disclosure under the act simply because it is submitted on a voluntary basis. Open Records Decision Nos. 575 (1990); 479 (1987). Furthermore, a governmental body may not agree to keep information confidential unless a statute specifically authorizes it to do so. Open Records Decision Nos. 437 (1986) at 4; 414 (1984).

Section 3(a)(1) excepts from disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Two provisions in the Medical Practice Act, article 4495b, V.T.C.S., apply to the disclosure of information held by the board. Section 4.05(d) provides in relevant part that

[a]ll complaints, adverse reports, investigation files, other investigation reports, and other investigative information in the possession of, received or gathered by the board or its employees or agents relating to a licensee, an application for license, or a criminal investigation or proceedings are privileged and confidential and are not subject to discovery, subpoena, or other means of legal compulsion for their release to anyone other than the board or its employees or agents involved in licensee discipline.

V.T.C.S. article 4495b, § 4.05(d) (emphasis added).

This provision is part of subchapter D of the Medical Practice Act, which governs disciplinary actions taken by the board against physicians. In a decision construing the predecessor statute to section 4.05(d),³ this office stated that this section must be construed as part of subchapter D as a whole, and in this context, "it becomes apparent that the intent of [the] confidentiality provisions is to shield the identities of licensees against whom complaints are filed, most likely to protect their reputations." Open Records Decision No. 458 (1987) at 3; *see also* Attorney General Opinion JM-906 (1988) at 14 (information within § 4.05(d) confidentiality provision is excepted from disclosure by § 3(a)(1) of Open Records Act). You indicate that the social security numbers and dates of birth of physicians are collected by the board as part of the "licensure application process," rather than in connection with any type of disciplinary proceeding. As such, this information does not appear to fall within any of the categories of information made confidential by section 4.05(d). As a result, none of this information is excepted from public disclosure by section 3(a)(1) of the Open Records Act in conjunction with section 4.05(d) of the Medical Practice Act.

Section 3.05(d) of the Medical Practice Act provides that "deliberations and records relating to the professional character and fitness of applicants are exempted from . . . the Open Records Law." V.T.C.S. article 4495b, § 3.05(d). Section 3.04(a), which sets out the qualifications necessary to receive a medical license, requires applicants to submit proof that they are "at least 21 years of age." *Id.* § 3.04(a)(1). Consequently, an applicant's date of birth relates to his or her fitness to receive a medical license, and this information is excepted from public disclosure by section 3(a)(1) of the Open Records Act. However, nothing in the Medical Practice Act indicates that an applicant's social

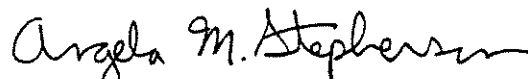
³The relevant portion of section 4.05(d) previously provided that "[a]ll complaints, adverse reports, and investigation files and reports received or gathered by the board relating to a licensee, an application for license, or a criminal investigation or proceedings are privileged." Acts 1981, 67th Leg. 1st C.S., ch. 1, § 1, at 24. The legislature amended this section to its current form in 1987. Acts 1987, 70th Leg., ch. 596, § 9, at 2330.

security number is related in any way to professional character or fitness. Cf. Open Records Decision No. 351 (1982) (names and addresses of CPA candidates are not "qualifications" necessary to receive CPA certificate). Therefore, this category of information may not be withheld from public disclosure pursuant to section 3(a)(1) of the Open Records Act in conjunction with section 3.05(d) of the Medical Practice Act.

Finally, we consider whether the social security numbers of individual physicians are excepted from public disclosure as information protected by privacy doctrine. Information may be withheld from required public disclosure under common-law privacy if it meets the criteria articulated for section 3(a)(1) of the act by the Texas Supreme Court in *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Under the *Industrial Foundation* case, information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and is of no legitimate concern to the public. The test for constitutional privacy, as incorporated into section 3(a)(1), involves a balancing of the individual's privacy interests against the public's need to know information of public concern. *Id.*; see also Open Records Decision No. 447 (1986) at 4. An individual physician's social security number does not constitute the type of highly intimate or embarrassing information that is protected by privacy doctrine. See Open Records Decision Nos. 373 (1983); 254 (1980). We therefore conclude that this category of information obtained by the board as part of the application process for medical licenses is not excepted from public disclosure by section 3(a)(1) of the Open Records Act and must be released.⁴

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Angela M. Stepherson
Assistant Attorney General
Opinion Committee

AMS/MRC/jmn

ref.: ID# 19800

⁴We note that a federal statute, 42 U.S.C. § 405(c)(2)(C)(vii)(I), provides that social security numbers obtained "by authorized persons pursuant to any provision of law, enacted on or after October 1, 1990, shall be confidential." Because the board's authority to obtain social security numbers under the Medical Practice Act appears to pre-date October 1, 1990, we need not consider whether the information at issue is confidential under this statute.

cc: Ms. Deanna Bellandi
The Tampa Tribune
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